

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20 CV 378 MOC WCM

This matter is before the Court on a “Formal Request to Court by Plaintiff,” Doc. 5, which the undersigned construes as motion seeking an Order allowing service on Defendant by the United States Marshal’s Service.

In his filing, Plaintiff states that he has previously requested, without success, that Defendant waive service in this matter. Plaintiff now requests that the court order service by the United States Marshal and that the cost of such service be imposed upon Defendant.

Federal Rule of Civil Procedure 4(d) provides that a plaintiff may notify a defendant “that an action has been commenced and request that the defendant waive service of a summons.” The notice and request must:

- (A) be in writing and be addressed:
  - (i) to the individual defendant; or
  - (ii) for a defendant subject to service under Rule 4(h),

to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

- (B) name the court where the complaint was filed;
- (C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;
- (D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;
- (E) state the date when the request is sent;
- (F) give the defendant a reasonable time of at least 30 days after the request was sent--or at least 60 days if sent to the defendant outside any judicial district of the United States--to return the waiver; and
- (G) be sent by first-class mail or other reliable means.

FRCP 4(d)(1).

Plaintiff has submitted a USPS Certified Mail Receipt indicating that something was sent to “Advanced Business Equipment.” Doc. 5 at 2. It is not clear, though, whether Plaintiff has complied with the requirements of FRCP 4(d)(1).

However, Plaintiff was previously granted leave to proceed *in forma pauperis* in this matter, Doc. 3, and therefore Plaintiff may proceed without the prepayment of fees and costs. Consequently, although the undersigned declines to impose the costs of service upon Defendant based upon the current record, the undersigned will order service by the United States Marshal, at the

expense of the United States Government.

**IT IS THEREFORE ORDERED THAT:**

1. The "Formal Request to Court by Plaintiff" (Doc. 5) is **GRANTED IN PART.**
2. To the extent Plaintiff has not done so, Plaintiff shall prepare summonses for Defendant and submit the summonses to the Clerk.
3. Upon receipt of the summonses, the Clerk is respectfully directed to issue them and then deliver process to the United States Marshal's Service for service.
4. The United States Marshal's Service shall serve process on Defendant at the expense of the United States Government.
5. Notwithstanding the service of process by the United States Marshal's Service as directed herein, Plaintiff remains responsible for making sure that service is effected properly pursuant to the Rules of Civil Procedure.

Signed: January 28, 2021



W. Carleton Metcalf  
United States Magistrate Judge

